

- (1) The Appeals Board has jurisdiction to review preliminary hearing findings regarding timely notice of accident under K.S.A. 44-534a.
- (2) The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. Claimant alleges she sustained repetitive mini-traumas to her right shoulder while working for the respondent between July 5, 1995 and August 4, 1995. In the early morning hours of August 5, 1995, claimant telephoned and advised the respondent's night clerk that she

would not be at work that day because her shoulder was hurting and she was going to the hospital. During that conversation claimant was advised that she would probably be fired. There is no evidence that the night clerk was claimant's supervisor or held any type of management position.

When respondent's owner and manager, Mike Bittinger, reported to work that morning he told the day clerk to telephone claimant and advise her she was terminated if she did not come to work or provide a good reason she could not. Claimant's last day of work for the respondent was August 4, 1995.

Mr. Bittinger testified that he was unaware claimant believed she had sustained a work-related accident until a telephone call from her attorney on September 7, 1995. Because respondent did not receive notice of accident until claimant's attorney telephoned respondent regarding this claim, notice was not provided within ten (10) days of claimant's date of accident.

Claimant testified she spoke with a co-worker, Linda Becker, on August 4, 1995 about her right shoulder hurting when she carried baskets of laundry to the second floor of the motel. Because claimant believed Ms. Becker was claimant's supervisor, claimant contends that conversation constituted notice of accident to the respondent. In the alternative, claimant contends she has established just cause for failure to provide notice within ten (10) days as required by K.S.A. 44-520 because she believed Ms. Becker was her supervisor and, therefore, believed timely notice had been given. The Appeals Board does not agree. The weakness in claimant's argument is that the evidence does not establish a factual basis to support claimant's mistaken belief.

The Appeals Board agrees with the Administrative Law Judge that claimant did not provide notice of accident within ten (10) days of its occurrence and that claimant did not establish just cause for failure to provide notice of accident within the required ten (10) day period. Therefore, the Appeals Board also agrees with the Administrative Law Judge that claimant has failed to establish timely notice of accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Bruce E. Moore dated November 6, 1995 should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Bradley Pistotnik, Wichita, Kansas
 Douglas D. Johnson, Wichita, Kansas
 Bruce E. Moore, Administrative Law Judge
 Philip S. Harness, Director